

**Complaints**

The law prohibits coworkers, supervisors, managers, and third parties with whom an employee comes into contact from engaging in unlawful discrimination (including harassment and retaliation) based on any category protected under Title 5 of the California Code of Regulations. Any person who has suffered unlawful discrimination may file a formal or informal complaint of unlawful discrimination.

A formal complaint is a written and signed statement filed with the District or the California Community Colleges Chancellor's Office that alleges unlawful discrimination in violation of the District's Board Policies and Administrative Procedures (See BPs/APs 3410 (non-discrimination), 3430 (prohibition of harassment)). An informal complaint is any of the following: (1) An unwritten allegation of unlawful discrimination; (2) a written allegation of unlawful discrimination that falls outside the timelines for a formal complaint; or (3) a written complaint alleging unlawful discrimination filed by an individual who expressly indicates that they do not want to file a formal complaint.

**Informal Complaints**

Any person may submit an informal complaint to the Office of Staff & Student Diversity or any other District or college administrator. Administrators receiving an informal complaint shall immediately notify the Office of Staff & Student Diversity in writing of all pertinent information and facts alleged in the informal complaint.

A primary purpose of the informal complaint and resolution process is to stop the alleged incident from continuing and prevent it from reoccurring. In and of itself, resolution of an informal complaint does not have disciplinary implications for respondents. However, if the behavior/incident persists, formal investigation may be warranted.

Upon receipt of an informal complaint, the Office of Staff & Student Diversity will notify the person bringing the informal complaint of their right to file a formal complaint, if the incident falls within the timeline for a formal complaint, and explain the procedure for doing so. The complainant may later decide to file a formal complaint, if within the timelines to do so. If the individual chooses not to file a formal complaint, or if the alleged conduct falls outside the timeline to file a formal complaint, the Office of Staff & Student Diversity shall consider the allegations contained in the informal complaint and determine the appropriate course of action. This may include efforts to informally resolve the matter, or a fact-finding investigation.

The Office of Staff & Student Diversity will explain to any individual bringing an informal complaint that the Office of Staff & Student Diversity may decide to initiate an investigation, even if the individual does not wish the Office of Staff & Student Diversity to do so. The Office of Staff & Student Diversity shall not disregard any allegations of unlawful discrimination solely on the basis that the alleged conduct falls outside the deadline to file a formal complaint.

**Formal Complaints**

Formal Complaints must be filed with the Chancellor of the California Community Colleges or the Office of Staff & Student Diversity unless the party submitting the Formal Complaint alleges unlawful

discrimination against the responsible district officer, in which case it should be submitted directly to the Superintendent/President or the Chancellor of the California Community Colleges.

A primary distinction between the informal and formal complaint process is that the investigation of a Formal Complaint is conducted to determine whether or not the respondent has violated District board policy on non-discrimination, prohibition of harassment, and/or sexual and gender-based misconduct. A violation of District board policies may result in disciplinary action.

Formal Complaints should be submitted on the form prescribed by the Chancellor of the California Community Colleges. A copy of the form will be available at the Office of Staff & Student Diversity, the District Human Resources office, and the Office of Student Development, as well as on the District's website.

If any party submits a written allegation of unlawful discrimination not on the form described above, the District will seek to have the individual complete and submit the form. However, if the individual chooses not to do so, the District will attach the written allegation(s) to the form and treat it as a Formal Complaint. In no instance will the District reject a written allegation of unlawful discrimination on the basis that it was not submitted on the proper form.

A Formal Complaint must meet each of the following criteria:

1. It must allege facts with enough specificity to show that the allegations, if true, would constitute a violation of District policies or procedures prohibiting unlawful discrimination;
2. The complainant must sign and date the Formal Complaint;
3. The complainant must file any Formal Complaint not involving employment within one (1) year of the date of the alleged unlawfully discriminatory conduct or within one (1) year of the date on which the complainant knew or should have known of the facts underlying the allegation(s) of unlawful discrimination; and
4. The complainant must file any Formal Complaint alleging unlawful discrimination in employment within one hundred eighty (180) days of the date of the alleged unlawful discrimination, except that this period shall be extended by no more than ninety (90) days following the expiration of the one hundred eighty (180) days if the complainant first obtained knowledge of the facts of the alleged violation after the expiration of the one hundred eighty (180) days.

If the Formal Complaint does not meet the requirements set forth above, the Office of Staff & Student Diversity will promptly return it to the complainant and specify the defect. If the sole defect is that the Formal Complaint was filed outside the applicable proscribed timeline, the Office of Staff & Student Diversity will handle the matter as an informal complaint.

**Oversight of Complaint Procedure:** The Director of Staff & Student Diversity is the responsible District officer charged with receiving complaints of discrimination or harassment, and coordinating their investigation.

The actual investigation of complaints may be assigned by the Director of Staff & Student Diversity to the Investigator, other staff or to outside persons or organizations under contract with the District. Investigations shall be assigned to outside persons or organizations whenever the Office of Staff & Student Diversity and/or Human Resources is named in the complaint or implicated by the allegations in the complaint.

**Who May File a Complaint:** Any student, employee, or third party who believes they have been unlawfully discriminated against by a student, employee, or third party in violation of this procedure and the related policy.

**Where to File a Complaint:** A student, employee, or third party who believes they have been unlawfully discriminated against in violation of these policy and procedures may make a complaint orally or in writing to the Office of Staff & Student Diversity.

If a complainant decides to file a formal written unlawful discrimination complaint against the District, they must file the complaint on a form prescribed by the California Community Colleges Chancellor's Office. These approved forms are available from the Office of Staff & Student Diversity website and at the California Community Colleges Chancellor's Office website.

The completed form must be filed with any of the following:

- Office of Staff & Student Diversity; or
- California Community Colleges Chancellor's Office.

### **Employment-Related Complaints**

Complainants filing employment-related complaints shall be notified that they may file employment discrimination complaints with the U.S. Equal Employment Opportunity Commission (EEOC) or the Department of Fair Employment and Housing (DFEH).

Complaints filed with the EEOC or the DFEH should be forwarded to the California Community Colleges Chancellor's Office.

Any District employee who receives an unlawful discrimination complaint shall notify the Office of Staff & Student Diversity immediately.

**Filing a Timely Complaint:** Since failure to report unlawful discrimination impedes the District's ability to stop the behavior, the District strongly encourages anyone who believes they are being unlawfully discriminated against, to file a complaint. The District also strongly encourages the filing of such complaints within thirty (30) days of the alleged incident. While all complaints are taken seriously and will be investigated promptly, delay in filing impedes the District's ability to investigate and remediate.

All supervisors and managers have a mandatory duty to report incidents of unlawful discrimination (including hostile work environments and acts of retaliation).

The District will investigate complaints involving acts that occur off campus if they are related to an academic or work activity or if the harassing conduct interferes with or limits a student's or employee's ability to participate in or benefit from the school's programs or activities.

**Communicating that the Conduct is Unwelcome:** The District further encourages students and employees to let the offending person know immediately and firmly that the conduct or behavior is unwelcome, offensive, in poor taste or inappropriate.

**Intake and Processing of the Complaint:** Upon receiving notification of an unlawful discrimination complaint, the Office of Staff & Student Diversity shall:

1. Undertake efforts to informally resolve the charges, including but not limited to mediation, rearrangement of work/academic schedules; obtaining apologies; providing informal counseling, training, etc.;
2. Advise the complainant that informal resolution of the complaint, as described above, is optional and that they have the right to end the informal resolution process at any time;
3. Advise a student complainant that they may file a complaint with the Office of Civil Rights of the U.S. Department of Education and employee complainants may file a complaint with the Department of Fair Employment and Housing. All complainants should be advised that they have a right to file a complaint with local law enforcement, if the act complained of is also a criminal act. The District must investigate even if the complainant files a complaint with local law enforcement. In addition, the District should ensure that complainants are aware of any available resources, such as counseling, health, and mental health services; and
4. To the extent possible, take interim steps to minimize exposure to and protect a complainant from coming into contact with a respondent. The Office of Staff & Student Diversity should notify the complainant of their options to avoid contact with the respondent and allow students to change academic situations as appropriate.

### **Investigation**

The Office of Staff & Student Diversity shall:

1. Authorize the investigation of the complaint, and supervise or conduct a thorough, prompt and impartial investigation of the complaint, as set forth below. Where complainants opt for informal resolution, the designated officer will determine whether further investigation is necessary to ensure resolution of the matter and utilize the investigation process outlined below as appropriate. In the case of a formal complaint, the investigation will include interviews with the complainant, the accused, and any other persons who may have relevant knowledge concerning the complaint. This may include victims of similar conduct.
2. Review the factual information gathered through the investigation to determine whether the alleged conduct constitutes a violation of the District's Board Policies on non-discrimination and prohibition of harassment, giving consideration to all factual information and the totality

of the circumstances, including the nature of the verbal, physical, visual or sexual conduct, and the context in which the alleged incidents occurred.

**Investigation of the Complaint:** The District shall promptly investigate every complaint and claim of unlawful discrimination. No claim of workplace or academic unlawful discrimination shall remain unexamined. This includes complaints involving activities that occur off campus and in connection with all the academic, educational, extracurricular, athletic, and other programs of the District, whether those programs take place in the District's facilities, on a District bus, or at a class or training program sponsored by the District at another location. The District shall promptly investigate complaints of unlawful discrimination that occur off campus if the alleged conduct creates a hostile environment on campus.

As set forth above, where the complainant opts for an informal resolution, the Office of Staff & Student Diversity may limit the scope of the investigation, as appropriate. The District will keep the investigation confidential to the extent possible, but cannot guarantee absolute confidentiality because release of some information on a "need-to-know-basis" is essential to a thorough investigation. When determining whether to maintain confidentiality, the District may weigh the request for confidentiality against the following factors: the seriousness of the alleged harassment; the complainant's age; whether there have been other harassment complaints about the same individual; and the accused individual's rights to receive information about the allegations if the information is maintained by the District as an "education record" under the Family Educational Rights and Privacy Act (FERPA), 20 U.S. Code Section 1232g; 34 Code Federal Regulations Part 99.15. The District will inform the complainant if it cannot maintain confidentiality.

**Investigation Steps:** The District will fairly and objectively investigate unlawful discrimination complaints. Employees designated to serve as investigators under this policy shall have adequate training on what constitutes sexual harassment, including sexual violence, and that they understand how the District's grievance procedures operate. Investigators may not have any real or perceived conflicts of interest and must be able to investigate the allegations impartially.

Investigators may use the following steps: interviewing the complainant(s); interviewing the accused individual(s); identifying and interviewing witnesses and evidence identified by each party; identifying and interviewing any other witnesses, if needed; reminding all individuals interviewed of the District's policies prohibiting retaliation; considering whether any involved person should be removed from the campus pending completion of the investigation; reviewing personnel/academic files of involved parties, if appropriate; reach a conclusion as to the allegations and any appropriate disciplinary and remedial action; and see that all recommended action is carried out in a timely fashion. When the District evaluates the complaint, it shall do so using a preponderance of the evidence standard. Thus, after considering all the evidence it has gathered, the District will decide whether it is more likely than not that unlawful discrimination has occurred.

**Timeline for Completion:** The District shall use reasonable and diligent efforts to conduct unlawful discrimination investigations within ninety (90) calendar days unless there are extenuating circumstances that prohibit the timeliness of the completion of the investigation. If an extenuating circumstance exists that prohibits the completion of an investigation within ninety (90) calendar days, the District will inform the parties in writing of such delay.

**Cooperation Encouraged:** All employees are expected to cooperate with a District investigation into allegations of unlawful discrimination. Lack of cooperation impedes the ability of the District to investigate thoroughly and respond effectively. However, lack of cooperation by a complainant or witnesses does not relieve the District of its obligation to investigate. The District will conduct an investigation if it is discovered that harassment is, or may be occurring, with or without the cooperation of the alleged victim(s) and regardless of whether a complaint is filed. No employee will be retaliated against as a result of lodging a complaint or participating in any workplace investigation.

### **Written Report**

The results of the investigation of a complaint shall be set forth in a written report that will include at least all of the following information:

1. A description of the circumstances giving rise to the Formal Complaint;
2. A summary of the testimony provided by each witness interviewed by the investigator;
3. An analysis of relevant evidence collected during the course of the investigation;
4. A specific finding as to whether there is preponderance to believe that unlawful discrimination occurred with respect to each allegation in the complaint; and
5. Any other information deemed appropriate by the District.

The Written Report is confidential and will only be released to the District Disciplinary Officer for the purposes of deciding if appropriate disciplinary action will be taken in the event the Office of Staff & Student Diversity determines a District board policy violation.

### **Confidentiality of the Process**

Investigations are best conducted within a confidential climate. Therefore, the District does not reveal information about ongoing investigations except as necessary to fulfill its legal obligations. The District will keep the investigation confidential to the extent possible, but it cannot guarantee absolute confidentiality because release of some information on a “need-to-know-basis” is essential to a thorough investigation and to protect the rights of accused students and employees during the investigation process and any ensuing discipline.

### **Administrative Determination**

When an investigation has been completed following a formal unlawful discrimination complaint, the complainant and Chancellor of the California Community Colleges will receive written notice in accordance with Title 5. The written notice will include:

1. The determination of the Office of Staff & Student Diversity as to whether there is probable cause to believe discrimination occurred with respect to each allegation in the complaint;
2. A description of actions taken, if any, to prevent similar problems from occurring in the future;
3. The proposed resolution of the complaint; and
4. The complainant's right to appeal.

### **Discipline and Corrective Action**

If unlawful discrimination occurred in violation of District policy or procedure, the District shall take disciplinary action against the respondent and any other remedial action it determines to be appropriate. The action will be prompt, effective, and commensurate with the severity of the offense.

If the District imposes discipline against a student or employee as a result of the findings in its investigation, the student or employee may appeal the decision using the procedure for appealing a disciplinary decision.

If the District imposes discipline, the nature of the discipline will not be communicated to the complainant. However, the District may disclose information about the sanction imposed on an individual who was found to have engaged in harassment when the sanction directly relates to the complainant; for example, the District may inform the complainant that the harasser must stay away from the complainant.

Disciplinary actions against faculty, staff, and students will conform to all relevant statutes, regulations, personnel policies and procedures, including the provisions of any applicable collective bargaining agreement.

The District shall also take reasonable steps to protect the complainant from further unlawful discrimination, and to protect the complainant and witnesses from retaliation as a result of communicating the complaint or assisting in the investigation.

The District will ensure that complainants and witnesses know how to report any subsequent problems, and should follow-up with complainants to determine whether any retaliation or new incidents of harassment have occurred. The District shall take reasonable steps to ensure the confidentiality of the investigation and to protect the privacy of all parties to the extent possible without impeding the District's ability to investigate and respond effectively to the complaint.

### **Appeals**

If the complainant is not satisfied with the results of the administrative determination, they may, within fifteen (15) days, submit a written appeal to the Board of Trustees. The Board shall review the original complaint, the investigative report, the administrative decision, and the appeal. The Board shall issue a final District decision in the matter within forty-five (45) days after receiving the appeal. A copy of the decision rendered by the Board shall be forwarded to the complainant and to the California Community Colleges Chancellor's Office. The complainant shall also be notified of their right to appeal this decision.

If the Board does not act within forty-five (45) days the administrative determination shall be deemed approved and shall become the final decision of the District in the matter.

In any case not involving workplace unlawful discrimination, the complainant shall have the right to file a written appeal with the California Community Colleges Chancellor's Office within thirty (30) days after the Board issued the final District decision or permitted the administrative decision to become final. Such appeals shall be processed pursuant to Title 5.

In any case involving workplace unlawful discrimination, the complainant may, at any time before or after the issuance of the final decision of the District, file a complaint with the Department of Fair Employment and Housing.

**Extension of Time**

Within one hundred fifty (150) days of receiving a formal complaint, the District shall forward to the California Community Colleges Chancellor's Office the original complaint, the investigative report, a copy of the written notice to the complainant setting forth the results of the investigation, a copy of the final administrative decision rendered by the Board or indicating the date upon which the decision became final, and a copy of the notification to the complainant of their appeal rights. If, due to circumstances beyond its control, the District is unable to comply with the one hundred fifty (150) day deadline for submission of materials, it may file a written request for an extension of time no later than ten (10) days prior to the expiration of the deadline.

**File Retention**

The District will retain on file for a period of at least three (3) years after closing the case copies of:

1. The original complaint;
2. The investigatory report;
3. The summary of the report if one is prepared;
4. The notice provided to the complainant, of the District's administrative determination and their right to appeal;
5. Any appeal; and
6. The District's final decision.

The District will make such documents available to the Chancellor of the California Community Colleges upon request.

Where the complaint allegation consists of Sexual and Gender-Based Misconduct (including, but not limited to sexual harassment, stalking, intimate partner violence, and sexual assault), as defined by Title IX of the Education Amendments of 1972, please refer to District Board Policy and Administrative Procedure 3540.

**References:**

- 20 U.S. Code Sections 1681 et seq.;
- Education Code Sections 212.5, 231.5, 66281.5, and 67386;
- Government Code Section 12950.1;
- Title 5 Sections 59320, 59324, 59326, 59328, and 59300 et seq.;
- Title 2 Sections 11023 and 11024;
- 34 Code of Federal Regulations Section 106.8(b)

**El Camino College**

Revised 7/02, 2/03, 2/05, 2/06, 3/12, 6/13, 10/15, 4/16, 10/16, 10/17, 11/18